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IN THE

Supreme Court of the United States

October Term, 1946

No. 103

THE GOSPEL ARMY, a corporation,

Appellant,

vs.

THE CITY OF LOS ANGELES, the BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, DAN O. HOYE, City Controller,

Appellees.

APPELLANT'S REPLY TO APPELLEES' BRIEF.

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Appellant deems it advisable to reply, as briefly as possible, to appellees' recently filed brief.*

Certain portions of appellees' brief call the attention of this Court to new matters not included in the Transcript of Record or the Statement of Jurisdiction or other documents within the files of this appealed case.

Omission to challenge the verity of such matters seems proper and probably necessary in view of the apparent

*For brevity the following abbreviations are used herein: "T. R." means "Transcript of Record"; "Stat. of Jur." stands for "Statement of Jurisdiction"; "App. Br." means "Appellees' Brief"; "App. Op. Br." refers to "Appellant's Opening Brief," and "App." stands for the "Appendix" to appellant's opening brief.

purpose of the Rules of this Court to firmly restrict consideration of the issues to such records.

The new matters to which reference has been made are:

1. Under the caption, "Statement of the Case," the alleged information said to be revealed in "the files of the County Clerk of Los Angeles County," and the argument based thereon, comprising a portion of page 2 and all of page 3 of said brief.

2. Assertions contrary to the plain language of the ordinance which shows that Section 24.01 was added by amendment to Ordinance 77,000; said information concerns the alleged separation in the City Municipal Code of "Section 24.01" from "Ord. No. 77,000" and alleged separation in the administration of said "Section 24.01" and "Ord. No. 77,000" (App. Br. p. 7), all of which is extraneous of the Record and mere unsworn statements of counsel, and will not be discussed or directly controverted, although it will appear, in the presentation of another matter, by the testimony of the manager of the Department that said unsworn statements are erroneous.

3. The appendix to appellees' brief consists in part of three provisions selected by appellees' counsel from as many purported city ordinances, none of which were considered by the State Supreme Court or brought to its attention by either party, and none of which are within the record in this appeal. Also, said appendix contains purported copies of the ordi-

nance involved in the *Dart* case and an alleged copy of a resolution to enforce said purported ordinance. The opinion of the *Dart* case quotes the pertinent parts of two ordinances and did not consider the alleged resolution, and appellant's counsel knows not whether it is correctly set forth in said appendix.

4. *Appellees' "Point IV"* (App. Br. p. 39 *et seq.*), consists of a defense of the validity of one of the alleged Los Angeles City ordinances to be found among those set forth in the appendix to appellees' brief.

Opposing counsel testifies therein as to the contents of "Public Records of the Social Service Department of the City" and what they are said to "disclose." It seems hardly possible that he can be unaware of the impropriety of this procedure, and it is believed that the opposing party is not called upon to refute or discuss any portion of said "Point IV."

5. Throughout the discussion of sections of Ordinance 77,000 in appellees' brief (pp. 20-34), improper statements of facts nowhere contained in any document before this Court are made.

They are identified as follows:

(a) Page 20, concerning alleged millions of dollars contributed yearly to charity in Los Angeles.

(b) Page 21, concerning the percentage of Information Cards, requiring correction as shown by Department records.

(c) Page 2, unsworn assertions beginning with the words: "Subsection (f) was inserted."

(d) Page 24, the assertion, in substance that the present case presents the "first known challenges" to Section 44.05, within a period of 30 years.

(e) Page 28, a statement similar to "(d)" above, with respect to challenges to Section 44.14.

(f) Page 32, assertions concerning the thrift of churches, etc., under Ordinance 77,000, public faith therein, alleged statistics as to millions donated, and "vast sums" given to build churches, but not reported to the commission, etc.

(g) Page 32, depicting an appalling situation in Los Angeles in which opposing counsel aver that any person, however corrupt, was free to "ply his nefarious activities unhindered," before the instant ordinance and its immediate predecessor were enacted.

All of the foregoing assertions and alleged records and statistics may or may not be true and authentic. Appellant knows not, but doubts many of them, and insists that they have no proper place in appellees' brief, and cannot be considered in determining the merits of this case.

POINT I.

The Contention Set Forth Under "Point I" of Appellees' Brief Have Not Been Sustained Therein.

If, as appellees' brief states (p. 11), an application was made by appellant to be relieved from payment of a "revenue license tax," this merely goes to show that the City of Los Angeles places no limitation on its exactions, for a revenue tax has not the benefit of a regulating law by which the police power is exercised.

There is nothing in the record to show that the tax mentioned by appellee was a "revenue license tax," but during the trial, Ferris Miller, the manager of the Department, testified that appellant had, upon one occasion, applied for a license which relieves "a charitable organization" from paying anything. [T. R. p. 72.] Apparently this is done under an ordinance other than Ordinance 77,000, which provides a covert revenue to circumvent and shortcut the Charities and Relief Ordinance, which is even more obviously discriminatory than the endorsement provisions of the latter.

It is plain, therefore, according to this testimony, assuming it to be the alleged revenue ordinance, it fixes no rule by which the department may decide whether "they (applicants) qualify for the exempt license or pay license," and permits this determination to be discretionary with the commission. [T. R. p. 70.]

Under the decision in *In re Darte*, 172 Cal. 47, such a law as applied to charitable organizations is a violation of the due process guarantee and is null and void. Mr. Ferris testified that appellant's application was denied because the Department refused to approve it. [T. R. p. 72.]

He testified that although the application for a free license is made to the City Clerk, such applications are referred to the Social Service Department, and is "granted upon our approval." [T. R. pp. 72,73.]

The transcript shows the following question by appellant's counsel, and Mr. Ferris' answer:

> "Is there any fixed set of rules that show the department whether they quality for the exempt license or pay license, or is that a matter of discretion on your part? When I say 'yours,' the Commission.
>
> "A. The Commission has established a regulation which is not a part of the ordinance, but according to the City Attorney's opinion they are entitled to establish certain regulations and they have said a charity shall apply at least 50 percent of the income to charitable purposes. Of every dollar 50 cents should go to the charitable cause and not eaten up in expense." [T. R. p. 73.]

However, the witness was in error. The ordinance contains a fixed rule.

Appellees' brief (p. 38), is inaccurate and misleading in stating that the revenue ordinance "provides that charitable organizations, etc., which deal in secondhand articles, are exempt from the tax if the business is not for private gain."

The words "is not for private gain" are not within this exemption provision. The section reads:

> "Sec. 21.201. (a) The provisions of this Article shall not be construed to require the payment of any license fee to operate or carry on the functions of any charitable or religious institution, organiza-

tion or association organized for charitable or religious purposes and conducted solely for such purposes . . . ." [See App. to Appellee's Brief p. 6.]

Further provisions in the same section use the term "for private gain" but they refer to "teaching, preaching," etc., and to concerts, lectures, etc., only.

The revenue ordinance uses the same language, as does Section 44.16, [App. p. 12], of Ordinance 77,000 in respect to exempting organizations which solicit and dispose of goods for religious purposes, to-wit, the proceeds must be "solely for a religious purpose" under both laws, although Section 21.201 applies that test to charities, and in respect to such activity, is more objectionable than Ordinance 77,000, which only applies it to religion.

However, "the wicked flee when no man pursueth."

Appellant has not heretofore questioned the constitutionality of the alleged revenue ordinance; it has never been mentioned in appellees' brief or appellant's briefs in the State courts. The opinions of the State Supreme Court do not mention it.

Yet appellees' brief, "Point IV" (pp. 39-42), is devoted to an attempt to sustain the validity of said alleged revenue ordinance.

Appellant has heretofore questioned the right of the Department to adopt a rule which requires that 50 per cent of donations received must be used for a religious purpose or a charitable purpose, after all expenses for solicitations and other necessary matters have been deducted.

Yet, appellant has always claimed and still does, that in creating this rule, the Department functioned under the

provisions of Ordinance 77,000, and this is consistent with the testimony of Manager Ferris Miller.

Also, "(c)" of Section 21.100, expressly provides that all applications by charitable or religious organizations for exemptions, that is for free licenses, shall be "forwarded to the Social Service Commissioners" who shall determine whether or not the free license shall be granted.

Hence, the revenue ordinance is a false quantity in this case. It merely provides a different procedure by which a license to solicit may be obtained but places all applications therefor in the hands of the Department.

But this alien ordinance—alien as far as this case is concerned,—reveals a settled policy of the city to require that both charitable and religious activities be licensed and subjected to all regulations appropriate to lawful or even near-unlawful businesses, such as pawnbrokers and junk dealers.

Appellees' brief misconstrues the testimony of the city's witness Ferris Miller, Manager and Secretary of the Social Service Department of Los Angeles.

Ferris testified that "the ordinance differentiates between the two"—charity and a religious activity.

He said:

> "It is true that religious organizations do charitable work *and it is up to the jurisdiction;* even some churches do that work. *They solicit outside of their own walls.*" (Emphasis added.)

That, by the statement, "it is up to the jurisdiction," Mr. Miller referred to the Department of which he was manager, is shown by his testimony which followed, in which

he said that the Commission has the final word in deciding whether an organization soliciting donations as a religious activity or is a charitable or promotional affair; as to which power to determine, he said, "Yes, that is within their power," to "say yes or no." [T. R. p. 70.]

Mr. Miller testified that, with reference to the Gospel Army and Mrs. Colbert, the manager of its store where donated articles were sold, that he had written letters which were shown him dated August 6th and 28th asking Mrs. Colbert to "file an application for a license," and "one of my assistants also had a conversation with her regarding the same subject"; that the "Department asked the Gospel Army to comply with the solicitation." [T. R. pp. 63, 64.]

He testified that the Commission did not grant a permit to Mrs. Colbert after she filed a Notice of Intention, and one reason for its action was that she "failed to post a bond" [T. R. p. 69], and that the attitude of the Commission in reference to "the collection of salvaged personal property" was that Mrs. Colbert "is in the category of a promoter," and she "must have a license" and "post a bond," the license fee being $25.00 and the "surety bond is for $2000.00," and she must file reports "to the Social Service." [T. R. p. 70.]

Therefore, appellees' brief is misleading when it declares:

> "The record fails to show that any person requested the appellant to secure a second-hand dealer's license or a junk dealer's license from the Police Commission, or threatened to enforce such provisions of law against the appellant."

Again said brief is misleading (p. 10) when it asseverates:

> "It follows that the only issue which can be raised here is the business or commercial rights of the corporation, and no question of infringement of religious activity is involved."

Here, at the trial, the city's witness and manager of the Department plainly states that it had "asked" Mrs. Colbert to apply for a "promoter's license," which required her to pay the fee and post the bond, as provided by Section 44.19 of the Charities and Relief Ordinance.

He stated plainly that the Department, just as the State Supreme Court held concerning the ordinance, followed the ordinance and "differentiates between" charitable and religious activities and if the notice of intention shows that the activity includes charities, "the jurisdiction" has power to say "yes or no" and will say "no."

Appellees' brief thus engages in "double-talk" and the use of half-truths. It is true that no person requested the appellant to secure a second-hand dealer's license or a junk dealer's license from the Police Commission, but the Department and its manager Mr. Miller "requested" the Gospel Army and Mrs. Colbert that she file a Notice of Intention, with the Department (Ordinance, Sec. 44.05), without which the Department's manager said, the second-hand store could not be operated by her, and comply with "the solicitation," to-wit, the provisions of Ordinance 77,000 relating to solicitation, and all sections of which ordinance deal with the regulation of solicitation and are within the jurisdiction of the Department pursuant to Ordinance 77,000.

POINT II.

Appellees' Brief "Point II" Fails to Sustain the Claim That the Los Angeles City Ordinance Is a Valid Regulatory Law Properly Exercising the Police Power.

In applees' discussion of the subject set forth as "Point II" in their brief, a statement is made giving their understanding of appellant's contentions, which is quite at variance with the contentions which have been made by appellant.

Concerning the regulations which may lawfully be made of solicitations of donations to be used for charitable purposes, entirely divorced from religion, appellant has insisted that such regulations must not be unreasonable or unduly burdensome; that they must not be discriminatory or be administered under an administrative board which is empowered to discriminate on the basis of prejudice, bias or mere whimsy, and, hence, such regulations must not be vague or indefinite as to standards to govern their administration or leave decisions to the unrestrained discretion of administrative officers; appellant has urged that the regulations must be suited to the nature of the business regulated in order to be reasonable, and that therefore the principal provisions of the second-hand and junk dealer regulations are inapplicable and unreasonable as applied to a store maintained for charitable purposes which receives and disposes of donated goods only and buys nothing.

On the premises of these and kindred contentions, appellant has claimed and will urge that said regulations concerning the second-hand store and substantially all of the charities and relief ordinances are invalid; for ex-

ample, that many are unreasonable and unduly burdensome, some being practically prohibitive as to compliance therewith, so that all unendorsed charitable activities by persons or organizations are rendered impossible, and that no reasonable or fair or definite standard is provided to determine how or to whom endorsements may be dispensed.

It is implicit in these contentions that, contrary to appellees' brief, no claim is made that a charitable activity, engaged in by charitable but secular organizations or by individuals, are free from regulation.

It is equally clear, however, that there is no relationship or similarity between regulations which prevent spoiled food being fed to indigents, or diseased, germ-infected garments being handed out to clothe them, on one hand, and the provisions of Ordinance 77,000, which empowers the Department to spend weeks, months, years and forever in investigations, calls for information, more investigations and finally just plain failure to act upon an application for a permit or license, provisions for all of which unreasonable delays and restraints are made in said ordinance, which the opening brief points out.

It has been argued in appellant's opening brief that the Department is empowered to deny, through failure to act, the issuance of an Information Card, after the same has been applied for by a Notice of Intention to solicit.

The reporter's transcript in this case shows that this has actually occurred.

Mr. Miller, the Manager of the Department, said that no application of the Gospel Army "for any permit" had ever been denied during the period when he was the head

of the Department [T. R. p. 65], and that none had been granted. [T. R. p. 68.]

However, Miller testified that Mrs. Colbert filed "Notice of Intention" on behalf of the Gospel Army which was not granted. [T. R. p. 69.]

Apparently, although it was never formally denied, it was never granted, the practical effect was the same, because of the failure of the Commission to grant the application.

Therefore, as we view it, appellee's discussion set forth in pages 13 to 15, inclusive of their brief is wholly irrelevant, because in attempting to render the grounds urged by appellant for reversal of the State Supreme Court's decision absurd and legally impossible the situations and illustrations suggested distinguish themselves from the subject matter and regulations of the instant ordinance.

With reference to appellant's contentions concerning violations of the guarantee of religious freedom and exemptions from unlawful prior restraints upon the exercise of that right, appellant follows the pattern of *Ex parte Darte*, in that the right to continue to engage in religio-charitable activities are dependent upon the maintenance of the right of its solicitors and "promoter," Mrs. Colbert, the manager of its store, to exercise her right of religious freedom and to be exempt from such exactions and prior restraints as paying a flat license or revenue fee of $25.00 for a license, which is only good for a brief or indefinite period (Sec. 44.19, App. Op. Br. pp. 47-49) and posting a $2000.00 bond, and all of the other burdensome, unreasonable and arbitrary provisions of said Section 44.19.

In *Murdock v. Pennsylvania*, 319 U. S. 104, 87 L. Ed. 1292, this Court said:

> "It is plain that a religious organization needs funds to remain a going concern."

Again it said:

> "Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the Revolution."

This truth necessarily results because the work done by the colporteur, the solicitor and the "promoter"—solicitor is vital to provide funds to not only sustain distribution of products of the press, but to support such religious activities as church services and church charities.

It is believed that no decision has thus far held that a religious or charitable organization has no standing in court to complain of injuries to it, caused by unlawful ordinances under which the activities of its solicitors or colporteurs are unreasonably restrained or barred.

The trial court found that appellant's store "is being conducted by plaintiff for the sale of and disposal of salvaged personal property donated and given to said plaintiff by the general public; the proceeds derived therefrom is used by plaintiff in furtherance of said religious organization."

Also, it found that plaintiff "is engaged exclusively in the promulgation, by literature and word of mouth, of its religious beliefs, by and through its auxiliaries, and in the procuring of donations in the form of money and articles of value in the prosecution of its religious activities." [T. R. p. 9.]

The trial court further found that the defendants (appellees herein) had, among other things, "notified and demanded of Plaintiff that it must pay . . . a license to operate the store of Plaintiff," [T. R. p. 9], and that unless defendants are enjoined "from doing the things hereinbefore mentioned . . . Plaintiff will suffer irreparable injury therefrom." [T. R. p. 10.]

The majority opinion of the State Supreme Court held that a finding of the trial court that Plaintiff's solicitors "engaged exclusively in religious activities" was in error, since, it is said, the evidence showed without conflict that plaintiff also engaged in charities, which under the city's ordinance was separated from religion. [T. R. p. 97.]

That this holding was erroneous is one of the grounds urged herein for reversal, since, appellant argues, an essential element of religion, namely, charity, cannot be carved out by legislative fiat.

However, the trial court's other findings of fact have never been challenged by appellees or the State Courts as not supported by the evidence.

The evidence showed that the demands of the defendants had been made on appellant and its employees through the Department of Social Service of which the witness, Ferris Miller, was manager, and he testified that

> "we require that the organization file a notice of intention to solicit. Then if there is in the arrangement some thing which indicates that a person has

been employed to conduct that solicitation for pay then an additional application must be made for a license to conduct such solicitation. That is what we have asked Mrs. Colbert to file which has not been filed."

Mr. Ferris Miller admitted that Mrs. Colbert would have been required to file a Notice of Intention and to post a bond, which is required of a promoter only, in order that appellant's Notice of Intention to solicit (Application for Permit) might be considered. [T. R. p. 69.]

Also, Mr. Ferris Miller said that, it was the attitude of the Commission that Mrs. Colbert "is in the category of a promoter" with reference to "this salvage store and the collection of salvaged personal property." [T. R. p. 70.]

It thus appears that appellant will suffer irreparable injury as the result of the requirements of the instant ordinance and the officers who administer it which violate their solicitor's and promoter's right to exercise their freedom of religion by engaging in the religious activity of solicitation for religious charities.

In the Dart proceeding, Dart, the solicitor and seller of donated articles, was the plaintiff, but the nature and rights of his employer, the Salvation Army, were considered and determined, for their rights were inseparably merged.

In the instant case, the Gospel Army is the plaintiff, but to safeguard its financial rights, which in turn rest upon the rights both secular and religious of its solicitor and promoter, the nature of their services and their said rights are inextricably involved and must be considered and determined.

Appellees' brief directs attention to *Thomas v. Collins*, 323 U. S. 516, by quoting one brief excerpt from the majority opinion and another from the concurring opinion of Mr. Justice Jackson. The relevancy of the latter is not pointed out and the excerpt from the Court's opinion sustains appellant's consistently urged claim that only a reasonable registration or identification requirement is permissible in the regulation of either religious or charitable activities.

Said pronouncement supports appellees' contentions only upon the premise that the nineteen sections containing scores of requirements, many of which are obviously time-consuming and burdensome, can be, through some type of logic not employed in the majority opinion of the State Supreme Court, shown to be a mere registration or identification ordinance of such character that the "mendicant minister" envisaged in the *Cantwell v. Connecticut* opinion, would not be prevented from his solicitations and preaching the Gospel.

However, it is important to note that the doctrine of the *Thomas v. Collins* decision places the burden on appellees to show that the danger which the ordinance involved would guard against is an "actual or impending" and a "grave" danger; that such danger is a "clear and present danger," and not merely one which may be justified by clear public interest, but which is only "threatened doubtfully or remotely."

The applicability of this doctrinaire in the instant case results because the right to the free exercise of religion is grouped in the First Amendment with the rights of freedom of speech and of the people to assemble, and the importance of this grouping and relationship is declared

in the *Thomas v. Collins* case opinion. Indeed, it is said "They are cognate rights."

Hence, plaintiff's promoter and solicitors occupy the position of Thomas in his haven, consisting of the rights of free speech and assembly, and the defenders of the instant ordinance are placed with the defenders of the constitutionality of the Texas law, which law was the essence of simplicity in its requirements as compared with Ordinance 77,000 herein.

The purpose of said ordinance, according to the State Supreme Court, is to protect against possible deception and fraud on the part of solicitors. [T. R. p. 93.] There is no hint in the opinion of that Court that this danger is "clear and present" or that it is a "grave" danger to the public interest, and Mr. Justice Carter's dissenting opinion shows that such is not the fact. [T. R. p. 100 *et seq.*]

In arguing that the ordinance whose validity is involved herein is valid as a permitted regulatory measure and a registration ordinance appellees' brief cites *West Virginia State Board v. Barnette*, 319 U. S. 624, at p. 639, as authority for the proposition that

> "The right to investigate connotes a right to protect the public against fraud and misrepresentation and even to prohibit solicitation of known embezzlers, as a '. . . restriction only to prevent grave and immediate danger to interests which the state may lawfully protect.'"

This citation is misleading and garbles and revamps the language and concept expressed by this Court's opinion, wherein the quoted words are used.

Nothing is said about protecting "the public against fraud and misrepresentation," and the term "right to investigate" was not used.

The following excerpt reveals the contrast between the quotation from appellee's brief and the opinion, partly quoted and partly cited:

> "The right of a state to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of the press, of assembly, and of worship may not be infringed upon such slender grounds.
>
> "They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect."

Thus accurately quoted, we find a strong fundamental principle announced which itself challenges the validity of the entire plan of procedure and purpose of the instant ordinance, the purpose being as the majority opinion of the State Supreme Court said, to protect the public against fraud and misrepresentation, and Justice Carter's dissenting opinion clearly establishes, upon the basis of prior decisions of this Court and of reason, that there can be no "grave and immediate danger to interests which the state may lawfully protect" because the public is amply safeguarded from any fraud and misrepresentation which might result from solicitations for charity or religion by general laws of a punitive character and that appellant has priority of the constitutional rights involved over the exercise of the police power whose purpose is to prevent fraud and deception.

POINT III.

The Provisions of the City Ordinance Regulating Secondhand and Junk Dealers Is Unconstitutional and Void.

Under Point III of appellees' brief, they assert that they "make no claim that the evidence in the record would sustain a conclusion that appellant is 'engaged in the business' of secondhand or junk dealer or junk collector, regulated by Section 24.01 of the Los Angeles Municipal Code."

This constitutes a right-about-face from appellees' contention before the State Supreme Court. At that time in their opening brief, it was strenuously claimed that the secondhand store was a business and was subject to the provisions of Section 24.01, the Secondhand-Pawnbrokers Amendment to Ordinance No. 77,000, and argued that said provisions constitute a valid exercise of the police power. [T. R. pp. 24, 26, 82, 83.]

Appellees herein also contended in their brief filed in said State Court that the testimony of appellant's manager of its store indicated that provisions of the secondhand ordinance applied to said store. [T. R. p. 31.]

Appellees' closing brief in the same Court continued to argue that the secondhand store Section 24.01 was binding on the Gospel Army and that otherwise a religious organization could operate "poolhalls, cafes, or bars" and claim to be free of regulation. [T. R. p. 32.]

The State Supreme Court agreed with the city's contentions and held that the store was subject to said Section 24.01 and that none of its provisions violated any guarantee of the Fourteenth Amendment to the Federal Constitution. (Stat. of Jur., pp. 55, 56.)

Appellant has consistently claimed that the secondhand store is merely one of the religious activities of the Gospel Army and that the provisions of Section 24.01, as applied to such store, are "unreasonable and burdensome," as well as prior restraints upon the exercise of religious activities and religious freedom, relying upon *In re Dart*, 172 Cal. 47, and *Murdock v. Pennsylvania*, 319 U. S. 104. (Stat. of Jur., p. 27.)

Also appellant contended that its property rights in the secondhand store were infringed by said Section 24.01, and the store provides means for carrying on its religious and charitable activities, and that the defendant Board had classed Mrs. Colbert, the manager of said store, as a "promoter," and claimed the right to apply to her the provisions of Section 44.19 (Stat. of Jur., pp. 7-9) and other applicable provisions of Ordinance No. 77,000. (Stat. of Jur., p. 31.)

However, appellees still claim that appellant's store is subject to the provisions of Section 24.01, and rely upon *Rosenthal v. People of the State of New York*, 226 U. S. 260.

The mere citation of this case negatives appellees' assertion that they "do not claim that appellees are engaged in the business of a secondhand and junk dealer."

The *Rosenthal* case dealt with the validity of an ordinance similar to Section 24.01, as applied to such a store in which the business was buying and selling junk and secondhand goods of all kinds. The decision is entirely irrelevant as applied to a store dealing in donated articles and whose purpose is to support the religious and charitable activities of a religious organization.

Appellees dismiss and attempt to eliminate *In re Dart*, 172 Cal. 47, by the assertion that, as an authority supporting appellant's claim that the licensing provisions of the instant ordinance are invalid as applied to "persons engaged in the secondhand business, it suffices "to say that such statement is not in any manner supported by the record."

This treatment of the *Dart* case decision is similar to that accorded it before the State Supreme Court and the majority opinion disregards said decision.

Appellant trusts and expects that this Court will examine the *Dart* case opinion with the care which it deserves, especially since both dissenting opinions show that their authors regard the *Dart* case as decisive of the principal issues herein presented.

However, it is believed that in view of appellees' aforementioned assertion, the same calls for refutation by quoting from the opinion excerpts not contained in appellant's opening brief.

As to the charges against Dart, the opinion states:

> "Petitioner was arrested under two criminal complaints charging violations of these ordinances. By the first of these complaints, he was accused of soliciting 'alms, food, clothing, money and contributions . . . without first securing or having a permit or written certificate so to do from the Municipal Charities Commission.' By the second of these complaints, his crime was in 'selling and offering for sale clothing, household goods and other goods, wares, and merchandise which had been solicited and donated by charity and philanthropy without first obtaining or having a written permit so to do from the Municipal Charities Commission.'" (172 Cal., p. 49.)

The Court then recites the various activities in which the Salvation Army engaged, among which were: "It also maintains nine stores where secondhand clothing, furniture, rags, paper, and junk, are sold at low prices."

After reciting many demands made by the Charities Commission, the opinion states:

> "Always desirous of yielding obedience to the law, and of 'yielding to Caesar the things that are Caesar's,' the Salvation Army endeavored to comply with the exactions of the Charities Commission, but was unable to comply, with some of them without impairing its efficiency and integrity as an organized society for religio-charitable work. Failing to secure the permit, the Salvation Army continued this work. The petitioner is one of its officers. In the performance of his duties as such officer, and not otherwise, he has been subjected to these arrests and charged with these crimes."

Thus it appears that the questions directly presented were:

1. Was the requirement of the ordinance which made it an offense to solicit donations for charity without a permit invalid, where to secure the permit required the endorsement of the Commission?
2. Had the city the power to require that Dart secure a permit to sell goods in the secondhand store, where the ordinance delegated to the Commission power to endorse and relieve a charitable organization of the necessity of applying for a permit?

The opinion states:

> "The basic question remains: May a private charitable association be denied the right to fulfill the pur-

poses of its existence saving under a 'permit' from the authorities? We here use the term, 'private charity,' as meaning one not supported in whole or in part by State or Municipal funds." (172 Cal. at p. 52.)

Later in the opinion the question is answered in the negative, and it is said in substance that an affirmative answer "necessarily contains an assertion of power to prohibit or suppress vocations and occupations which, entirely aside from their religious character, are from a worldly point of view in and of themselves not only harmless but positively beneficial to humanity."

POINT IV.

Appellees' Elucidation of the Provisions of Ordinance No. 77,000 Is Incomplete and Inadequate.

Appellees' brief (p. 19) states that it is "well established that the validity of legislative acts is presumed," and indicate they desire the full benefit of this presumption.

In the instant case, in view of the nature of the challenges made to various provisions of the ordinance, the effect of the general presumptions, if any, is slight for as shown the dissenting opinion of Mr. Justice Carter [T. R. p. 100 *et seq.*], when a law is attacked as preventing or restricting the enjoyment of constitutional liberties, such presumptions do not prevail, but the Court is called upon "to appraise the substantiality of the reasons advanced in support of the regulations of the free enjoyment of the rights." (Quoting *Schneider v. Irvington*, 308 U. S. at p. 161.)

Also, as this Court asserted in *Panama Refining Company v. Ryan*, 292 N. S. 388, 79 L. Ed. 449:

> "No presumptions favorable to the validity of executive action attach where a legislative function is delegated, and, it is said, provision must be made for findings of such facts as the law makes requisite to action on the part of the non-legislative officer or board."

In the instant case we are dealing largely with delegated legislative functions. Examples are: The power to determine what information will "be of assistance to the public to determine the nature and trustworthiness of the purpose for which" any "solicitation is made." [Sec. 44.03 (4), App. p. 5.]

It is a delegated legislative function to decide what information, when supplied by an applicant for a permit to solicit, is not sufficient "for the public" concerning such matters as an agreement between the solicitor or promoter and the manager of a solicitation effort for some organization. [Sec. 44.06, App. p. 7.]

Another such function is to determine by what information "the public interest will be subserved" if given publicity concerning a solicitation intended for evangelical, missionary or religious purposes, but which is in part charitable. [Sec. 44.16, App. p. 16.]

To decide what "affairs" of an applicant for a promoter's license should be investigated, for the purpose of determining whether an application for a promoter's license should be granted or denied, is a legislative function. [Sec. 44.19, App. p. 16.]

These functions are all delegated to the appellee, Department of Social Service, with no standard provided for

their exercise and no requirement that findings be made to justify actions taken in their exercise.

No presumptions arise where such provisions or the acts of the non-legislative officer purportedly exercising such delegated functions are being reviewed judicially. (*Panama Ref. Co. v. Ryan, Schneider v. Irvington*, both *supra.)*

Appellees' brief (pp. 19 to 36) essays to refute the arguments of appellant by analysis of the ordinance involved and comments thereon.

The briefs of both parties have referred to the ordinance as set forth in the appendix to appellant's Opening Brief, which will be referred to by the abbreviation "App." herein.

The most noteworthy characteristic of said analysis and comments is the selection of ordinance sections and portions of sections whose validity appellant has not challenged to be held up as innocent and lawful and the scanty discussion a small fraction of those provisions which have been challenged.

Appellant has not attacked as unconstitutional subsection (c) of Section 44.02 [App. p. 3] erroneously referred to in appellees' brief as "(c)" of Section 44.03, not "(d)" of Section 44.02. (See App. Br. p. 20.)

Appellant has not claimed that a fee of one dollar for the first 25 cards or one cent for more is exorbitant [Sec. 44.02 (f), App. p. 4], as implied in appellees' brief (p. 23).

The validity of Section 44.05, subsection "(g)" [App. p. 6], has not been questioned. (App. Br. p. 23.)

Subsection (a) of Section 9 [App. p. 8] has not been challenged by appellant (see App. Br. p. 25), although subsection (b) thereof has been attacked by it upon grounds which appellee fails to mention. (App. Op. Br. p. 47 *et seq.*)

No one has challenged Section 44.18 [App. p. 13], which appellees' brief defends (p. 33).

Brief comments will suffice concerning appellees' defense of certain provisions which appellant claims are unconstitutional. As to the others, what is said in the Opening Brief will be relied upon.

Appellees' brief (p. 23), referring to Section 44.05, states "appellant fails to point to any provision which unfairly burdens one who wishes to solicit."

Opposing counsel overlook what is said in appellant's opening brief, page 56 *et seq.* and page 60 *et seq.* Also, on page 27, appellant "points to all of the provisions of Section 44.05 and assigns that they "constitute a burdensome bar" to the exercise of the right to engage in charitable and religious work.

Appellees assert that one reason for the requirement in Section 44.06 that the applicant must furnish any information in addition to that set forth in the Notice of Intention to Solicit (Application for Permit), which the Department may demand "within 48 hours after such request," is to save time and not interfere with the plans of the prospective petitioners.

The applicant is already a petitioner for a permit when the request is made.

However, appellees' statement is clearly inconsistent with other provisions of the same section which, as pointed

out in the opening brief, place no limit upon the time during which the Department may investigate, or the number of calls for further information that may be made; and in connection with Section 44.05, the range and duration of the investigations authorized may be unreasonable and burdensome as applied to solicitations for either charitable or religious activities. (App. Op. Br. pp. 45, 47, 66, 67, 69, 20, 29.)

Appellees fail to attempt refutation of appellant's claims that the 48-hour limitation on compliance with a request for "additional information" without limit as to the scope of the inquiry is unreasonable, burdensome and arbitrary, and that the same is true of the standardless delegation of authority contained in the language "for the public concerning the facts required to be stated" relating to the Board's concept and discretion in determining what information is sufficient for the public (App. Op. Br. p. 66), and the contention that the provisions of Section 44.06 in connection with those in Sections 44.05 and 44.12 constitute unreasonable and prohibitive prior restraints upon the exercise of the religious freedom and the rights to dispense charity and to acquire and dispose of property as guaranteed by the Fourteenth Amendment.

The language of Section 44.12 [App. p. 10] is too plain to admit of appellees' contention that the only requirement is that the person solicited "be given a reasonable opportunity to read the card" before a donation may be accepted.

The section says nothing about "reasonable opportunity." It says the person solicited must be given "sufficient opportunity to read same," which obviously means,

as Justice Edmonds of the State Supreme Court construed it, "sufficient time to read it."

The jurists said in this behalf that the information card "may therefore be a sizeable volume of data which in practice, if not in purpose, will effectively block public support," etc., and (27 Cal. (2d) p. 281) with respect to the receipt which Section 44.15 [App. p. 11] requires the solicitor to give the donor, appellees say: "The Information Card can be printed in advance upon the receipt form," thus picturing the whole required procedure as simple and quickly performed.

Opposing counsel, like the majority opinion of the State Court, fail to analyze this section in conjunction with Section 44.12.

However, after careful and intelligent analysis, Justice Edmonds said: "Only by means of a traveling office could a solicitor comply with all of these requirements" (Stat. of Jur., p. 104), and Justice Carter said of these sections, together with Sections 44.02, 44.03, 44.04, 44.07, 44.08, 44.10, 44.11, 44.14 and 44.15:

> "Assuming that the provisions above quoted do not involve any religious test, nevertheless they are so demanding as not only to open the door to unreasonable delay and abuse of discretion, but also as possible to bar certain classes of solicitors found among the 'little people,' obviously they do unreasonably obstruct and delay the collection of funds." (Stat. of Jur., p. 85.)

The foregoing approach by Justice Carter recalls that appellees' brief entirely avoids the issue presented by appellant's opening brief by which it is claimed that the

sections of the ordinance are so interrelated and interdependent that their collective effect is to deny to solicitors and charitable and religious organizations all rights guaranteed by the Fourteenth Amendment. (App. Op. Br. pp. 42-47.)

Appellees' brief assumes that unless the validity of the instant ordinance is sustained the citizens of Los Angeles will be in a defenseless predicament, subjected to corrupt and unprincipled rascals while the "lifeblood of charity" will be denied to the sick and the starving. (App. Op. Br. p. 32.)

It is not that bad. In fact, the only safeguard required is the enactment of a sane, fair, non-discriminatory regulatory ordinance which, unlike the monstrosity now maintained, will not view "with suspicion and distrust" everything that is done in the name of religion and charity, as Justice Edmonds put it (Stat. of Jur., p. 100), and a law which will not assume that the citizens of a municipality far-famed for its culture and educational facilities are mere babes in the woods, to be protected from their own inclinations to do good.

To be a valid ordinance, also, requirements for the utmost efficiency are more warranted as to charitable organizations than in respect to business ventures in which ordinary people invest.

It would seem feasible to suggest that the City of Los Angeles at least try out, for a reasonable period, an identification and registration law, leaving to those general state and city enactments which have generally been found sufficient to protect the public from swindlers and frauds the same means of protection in the matter of

charities, religious or secular. This policy is consistent with the American doctrine that citizens have a right to manage and dispose of their property as they see fit, which implies considerable responsibility on their part, and excludes legislation whose only purpose is guardianship of the individual citizen, whose mental incompetency has not been established.

It is believed that even a mere reading and comparison of appellees' brief with appellant's opening brief will show that the former does no more than scratch the surface in accomplishing its announced purpose of refuting appellant's challenges to the validity of the ordinance involved, as a whole, and to each of its pivotal sections.

Respectfully submitted,

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